



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200925048

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 26 2009

UIL No. 408.03-00

SE:TEP:RA:T4

Legend:

Taxpayer A =

Financial Institution A =

IRA X =

Amount A =

Date 1 =

Dear :

This is in response to your request, received October 22, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 63, represents that, on Date 1, he received a distribution from IRA X totaling Amount A. Taxpayer A asserts that his failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3) of the Code was due to a medical condition that impaired his ability to stand and walk for extended periods. Taxpayer A states that this medical condition was due to an injury to his left foot in late sustained while roofing an outdoor storage shed.

Taxpayer A represents that, in late , he was aware of recent losses in IRA X which triggered his decision to remove Amount A from IRA X and find another IRA with a higher rate of return. Taxpayer A represents that, while it was his intention to weigh the relative merits of other IRAs and rollover Amount A within the 60-day period, his

medical condition worsened during the 60-day period following Date 1, effectively preventing him from doing so. Amount A currently remains in Taxpayer A's savings account.

Based on these facts and representations, you request a ruling that the Internal Revenue Service ("the Service") waive the 60-day rollover requirement with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

- (i) the entire amount received (including money and other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject

to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

You have not presented evidence to the Service as to how any of the factors outlined in Revenue Procedure 2003-16 affected your inability to timely roll over Amount A or any portion thereof to an IRA. You have stated that, despite the progressive nature of your medical condition, you were physically able to visit your financial advisor in late ; deposit the distribution check you received on Date 1 in your savings account; visit other financial advisors subsequent to the termination of your relationship with your original financial advisor at Financial Institution A; and visit a doctor on , to obtain a diagnosis of and treatment for your medical condition. Furthermore, you stated that your failure to timely rollover Amount A to an IRA within the required 60-day period could be attributed to your uncertainty over which financial advisor to trust, the state of the stock market in early 2008 and other reasons unrelated to your medical condition. Finally, you declined to respond to a request from the Service for additional documentary evidence supporting your assertion that your medical condition effectively prevented you from timely rolling over Amount A.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount A from IRA X.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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If you wish to inquire about this ruling, please contact (ID) weekdays
between 8:15 a.m. and 4:45 p.m. at () . Please address all correspondence to
SE:T:EP:RA:T4.

Sincerely yours,

for *Ada Perry*

, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose